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**Hutchinson, Terry (2006) Educating the Transnational Lawyer: Globalisation and the Effects on Legal Research Skills Training . In *Proceedings Australasian Law Teachers Association - ALTA*, pages pp. 1-24, Melbourne Victoria Australia.**

Accessed from <http://eprints.qut.edu.au>



**Australasian Law Teachers Association – ALTA**

**Annual Conference**

**61<sup>st</sup> Annual ALTA Conference**

Victoria University, Melbourne, Victoria, Australia  
4 – 7 July 2006

*Legal Knowledge: Learning, Communicating and Doing*

**Published Conference Papers**

This paper was presented at the 2006 ALTA Conference in the  
'Legal Research and Communication' Interest Group

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*Conference Papers published by the ALTA Secretariat  
2006*

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**Educating the Transnational Lawyer:  
Globalisation and the Effects on Legal Research Skills Training**

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## I INTRODUCTION

This paper argues that the forces of globalisation and the forecasts of an increasingly cosmopolitan professional future for law graduates, increase the importance of legal research training for the new generation of ‘transnational lawyers’. The contextual issues driving change in the Australian legal education sector, including Australian government interest in fostering research quality, the effects of extensive take-up of information technology in the higher education sector, the growth of trade in professional legal services, and policies aimed at internationalising the legal curriculum all point to a need for more extensive jurisdictional coverage within the legal research education framework. These factors support the need for expanded legal research and communication training at the undergraduate level, together with enhanced offerings at the postgraduate level. First year legal research units have traditionally focussed on inculcating basic research skills. These have ensured that students could ‘find the law’ in their own state jurisdictions, and also in the Commonwealth jurisdiction. The units have also usually included some basic legal writing skills.

This paper supports the need for more advanced research units within the undergraduate degree in order to build on this base in a planned and articulated fashion. Such units must include information about the legal systems of foreign jurisdictions together with training in researching the laws there. England, New Zealand, Canada, the European Union and the United States should be covered. International law should also be included. This extension of skills to cover research in international jurisdictions is vital for Australian lawyers, who are undoubtedly being affected by transnational forces.

This paper is arguing for an extension of the undergraduate research skills training already established at many law schools to the postgraduate level. The paper seeks to analyse the two purposes inherent in contemporary research skills training. These two separate purposes are not clearly articulated. On the one hand, there is the need to train students for legal practice – through the undergraduate streams and in legal

practice courses. On the other hand, there is a need to train students for legal scholarship and academic careers through the undergraduate and postgraduate supervised research project units, the introductory postgraduate research courses and the Masters by research and PhD. Both these career directions have been directly affected by the modern transnational context.

### ***A Not International but Transnational Skills***

Why is this paper using the term ‘transnational’ law. Why not refer simply to ‘international’ law and ‘internationalisation’? What aspect of change is encompassed in this term? Transnational law is not a separate body of law but rather concerns laws which deal with events that cross national boundaries or ‘transcend national frontiers’.<sup>1</sup> Transnational law exists on a ‘supra-jurisdictional level’.<sup>2</sup> It encapsulates a globalising process, ‘the transnational creation of law’ rather than simply referring to the ‘traditional closed legal categories’ which exist within any individual jurisdiction,<sup>3</sup> or indeed the established body of law known as Public International Law. The transnational practice of law calls upon lawyers to move beyond the parochial and become ‘inter-culturally adaptable’.<sup>4</sup> Lawyers are trained to be knowledgeable and proficient in the law in their own jurisdictions. The modern ‘transnational’ lawyer also needs to have some grounding in a variety of international legal regimes and have the skills to work with legislation and caselaw from foreign legal regimes and cultures with understanding and sensitivity to their influence on the home law.<sup>5</sup> This assumes more than simply knowledge of international treaties and conventions. It includes some knowledge of politics, economics and cultural sensitivity. Academic commentators have observed clearly that the ‘next generation of lawyers will need to operate within the context of increasingly multilateral legal regulation, even over

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<sup>1</sup> Philip Jessup’s *Transnational Law* at 136, quoted in Craig Scott, ‘Transnational Curriculum for Tomorrow’s Lawyers – Is there a Curricular Core for the Transnational Lawyer?’ (Paper Presented at the AALS Conference on Educating Lawyers for Transnational Challenges, Hawaii, 26-9 May 2004), 133.

<sup>2</sup> Sébastien Lebel-Grenier, ‘What is a Transnational Legal Education?’ (Paper Presented at the AALS Conference on Educating Lawyers for Transnational Challenges, Hawaii, 26-9 May 2004), 117, 118.

<sup>3</sup> Ibid.

<sup>4</sup> Simone E Volet and G Ang, ‘Culturally mixed groups on international campus: an opportunity for inter-cultural learning’ (1998) 17(1) *Higher Education Research and Development* 5, 21.

<sup>5</sup> John M Law, ‘Globalisation and Canadian Legal Education’ (Paper Presented at the AALS Conference on Educating Lawyers for Transnational Challenges, Hawaii, 26-9 May 2004), 113.

areas of law that have traditionally been regarded as within the exclusive domain of the sovereign state'.<sup>6</sup> This is a change of direction that has obvious resonance in the legal research training area.

### ***B What are the Identifying Features of the Changing Environment?***

Some important factors typifying the current context include Australian government interest in fostering research quality, the effects of extensive take-up of information technology in the higher education sector, the evolving trade in professional legal services and the corresponding need for internationalisation of the curriculum.

#### ***1 Australian Government Policy on Research***

The Australian higher education sector has been the subject of government intervention in recent years. Some examples of this include the passage of the *Higher Education Support Act 2003* implementing policies from *Our Universities: Backing Australia's Future* (May 2003)<sup>7</sup> and the establishment of the Carrick Institute for Learning and Teaching in Higher Education.<sup>8</sup> General restructuring of Australian universities began in the 1980s.<sup>9</sup> There has been a growth in the number of university law faculties since the Dawkins Reforms,<sup>10</sup> which has resulted in more choice and competition in the market, and resources being allocated according to government-driven policy incentives.

This has led to increased subject specialisation through research centres in law faculties, and an instrumental view of research agendas. The government has

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<sup>6</sup> Steven Freeland, 'Educating Lawyers for Transnational Challenges – the Globalisation of Legal Regulation' (Paper Presented at the AALS Conference on Educating Lawyers for Transnational Challenges, Hawaii, 26-9 May, 2004) 31, 32.

<sup>7</sup> <<http://www.backingaustraliasfuture.gov.au/>> at 23 February 2007.

<sup>8</sup> <<http://www.carrickinstitute.edu.au/carrick/go/home>> at 23 February 2007.

<sup>9</sup> Department of Education, Training and Youth Affairs, *New knowledge, new opportunities: A discussion paper on higher education research and research training* (1999)

<[http://www.dest.gov.au/sectors/higher\\_education/publications\\_resources/profiles/archives/new\\_knowledge\\_new\\_opportunities.htm](http://www.dest.gov.au/sectors/higher_education/publications_resources/profiles/archives/new_knowledge_new_opportunities.htm)> at 23 February 2007; To take this restructuring further, see Department of Education, Training and Youth Affairs, *Knowledge and Innovation: A Policy Statement on Research and Research Training* (1999)

<[http://www.dest.gov.au/sectors/higher\\_education/publications\\_resources/profiles/archives/knowledge\\_and\\_innovation\\_policy\\_statement.htm](http://www.dest.gov.au/sectors/higher_education/publications_resources/profiles/archives/knowledge_and_innovation_policy_statement.htm)> at 23 February 2007.

<sup>10</sup> Department of Education, Science and Training, *Higher Education: A Policy Statement* (1988).

promoted national research agendas. Researchers are encouraged to plan their projects and schedules to maximise financial rewards from central and government funded incentives schemes such as the Australian Research Council National Competitive Grants Program.<sup>11</sup> Accountability, quality and outcomes are the current catchcries as exemplified in the development of the Research Quality Framework policies.<sup>12</sup> Refereed journal articles, external grants and PhD completions have become of major importance. There is more emphasis on interdisciplinary work (and a corresponding acceptance of the need for social science methodologies) along with the need for practical outcomes leading to strategic links being forged with industry.

The 2005 issues paper *Research Quality Framework: Assessing the quality and impact of research in Australia* raised two main points - how the quality and impact of research should be recognized and measured, and who should assess the quality and impact of research in Australia.<sup>13</sup> This process is still being investigated with implementation not to begin until 2008.<sup>14</sup> The underlying purpose of processes such as the RQF is efficiency – to increase competition and accountability so that the government can direct a limited amount of funding to where it will be used most efficiently. It is imperative that lawyers have excellent research skills in order to access funding under these competitive government schemes.

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<sup>11</sup> Australian Research Council <<http://www.arc.gov.au/ncgp/default.htm>> at 23 February 2007.

<sup>12</sup> Australian Department of Education Science and Training, *Research Quality Framework: Assessing the quality and impact of research in Australia* (2006) <[http://www.dest.gov.au/sectors/research\\_sector/policies\\_issues\\_reviews/key\\_issues/research\\_quality\\_framework/](http://www.dest.gov.au/sectors/research_sector/policies_issues_reviews/key_issues/research_quality_framework/)> at 23 February 2007.

<sup>13</sup> Australian Department of Education Science and Training, *Research Quality Framework: Assessing the quality and impact of research in Australia* (2005) <[http://www.dest.gov.au/sectors/research\\_sector/policies\\_issues\\_reviews/key\\_issues/research\\_quality\\_framework/issues\\_paper.htm](http://www.dest.gov.au/sectors/research_sector/policies_issues_reviews/key_issues/research_quality_framework/issues_paper.htm)> at 23 February 2007.

<sup>14</sup> Australian Department of Education Science and Training, *RQF Developments in 2006* (2006) <[http://www.dest.gov.au/sectors/research\\_sector/policies\\_issues\\_reviews/key\\_issues/research\\_quality\\_framework/rqf\\_development\\_2006.htm](http://www.dest.gov.au/sectors/research_sector/policies_issues_reviews/key_issues/research_quality_framework/rqf_development_2006.htm)> at 23 February 2007.



## ***2 Information Technology Affecting Legal Research***

Given the extensive history of the legal profession's use of printing press technology, legal data was ripe for transferral to full text databases. In the new environment what occurred initially was that the main print publishers uploaded their existing data sets so that the information was available on screen. Slowly the publishers have transmuted the datasets to make new electronic products. FirstPoint is an example of this new generation of offerings. The Internet added an additional layer to this picture in that it widened the nature of the legal material that was available. The Internet is both a blessing and a curse. It can add more for less cost by broadening the range of material located, for example through basic Google searches. At the same time, this electronic information does not possess the assurance of quality provided by more expensive published sources with high standards of editorial control. Now that there is more international and comparative law readily available it is imperative that law students are given training in understanding and using it effectively in their research.

Technology has affected teaching methods. Brendan Nelson's report on tertiary education underlined the importance of information technology to establish global networks for research/education.<sup>15</sup> E-learning has affected the traditional lecture/tutorial (seminar) system of teaching allowing students to access basic course outlines, study guides, online tutorials, notice boards, readings and links which aids flexibility in terms of time and space.<sup>16</sup> This means there is an additional ability for students to be enrolled transnationally in 'virtual classrooms'.<sup>17</sup>

These information technology developments affect not only the research tools but also the opportunities for changing methods of research training, particularly postgraduate research training. Postgraduate research students can communicate with their

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<sup>15</sup> Brendan Nelson, *Our Universities: Backing Australia's Future* (2003)

<[http://www.backingaustraliasfuture.gov.au/policy\\_paper/policy\\_paper.pdf](http://www.backingaustraliasfuture.gov.au/policy_paper/policy_paper.pdf)> at 23 February 2007.

<sup>16</sup> Terry Hutchinson, 'Special Methods and Tools for Educating the Transnational Lawyer: Using the Internet for research Training: Project Timelines, Reflective Journals and the Foundations Project' (Paper Presented at the AALS Conference on Educating Lawyers for Transnational Challenges, Hawaii, 26-9 May 2004), 41.

<sup>17</sup> Michael A Adams, 'Special Methods and Tools for Educating the Transnational Lawyer' (Paper Presented at the AALS Conference on Educating Lawyers for Transnational Challenges, Hawaii, 26-9 May 2004), 17.

supervisors via email, videolink and the cheaper Internet based videolink programs such as Skype. They can post timelines and literature review data on the web to be simultaneously accessed by their supervisors.<sup>18</sup>

### ***3 Trade in Professional Legal Services and Internationalisation***

The General Agreement on Trade in Services (GATS) and the Australia-US Free Trade Agreement<sup>19</sup> are opening up opportunities for graduates to practice beyond Australia and for foreign lawyers to practice in Australia. Since 1994, when GATS was concluded, there has been provision for the liberalisation of the service industry and an increase in export opportunities in professional services.<sup>20</sup>

Thus the last ten years have witnessed much more cross-jurisdictional work between Australian states and territories. There are many more legal firms organising on a national basis. There are still restrictions through regulations on the provision of legal services.<sup>21</sup> In order to practice in Australia, for example, foreign lawyers need accreditation. The *Model Practice of Foreign Law Bill* which was drafted by the Standing Council of Attorney-Generals (SCAG) has been enacted in several states and paves the way for foreign-trained lawyers being allowed to practice in Australia. Most of the states have opted for a limited licence approach. South Australia has opted for a minimalist approach which means that a person may practice foreign law without committing an offence.<sup>22</sup>

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<sup>18</sup> Hutchinson, above n 16.

<sup>19</sup> Department of Foreign Affairs and Trade, *Australia-United States Free Trade Agreement* (2004) <[http://www.dfat.gov.au/trade/negotiations/us\\_fta/final-text/index.html](http://www.dfat.gov.au/trade/negotiations/us_fta/final-text/index.html)> at 23 February 2007.

<sup>20</sup> Christopher Arup, 'Law Without Borders?' (2003) 77(8) *Law Institute Journal* 48, 50; Mark Vaile, 'GATS to Open Doors for Australian Exporters' (Press Release, 1 July 2002) 1 <[http://www.trademinister.gov.au/releases/2002/mvt064\\_02.html](http://www.trademinister.gov.au/releases/2002/mvt064_02.html)> at 23 February 2007.

<sup>21</sup> International Legal Services Advisory Council, *Australian Legal Services Export Development Strategy 2003 to 2006* (2003) <[http://www.ag.gov.au/agd/WWW/rwpattach.nsf/viewasattachmentpersonal/\(116DB49758B085D5D62E7E5FEFCD23E8\)~AustLegalServicesExportStrategy2003\\_6.pdf/\\$file/AustLegalServicesExportStrategy2003\\_6.pdf](http://www.ag.gov.au/agd/WWW/rwpattach.nsf/viewasattachmentpersonal/(116DB49758B085D5D62E7E5FEFCD23E8)~AustLegalServicesExportStrategy2003_6.pdf/$file/AustLegalServicesExportStrategy2003_6.pdf)> at 23 February 2007, 28.

<sup>22</sup> Ibid 12.

#### **4 Internationalising the Curriculum**

In response, Australian law schools have been endeavouring to ‘internationalise’ their profiles and curriculum.<sup>23</sup> The International Legal Education and Training Committee (‘Legal Education Committee’) of the International Legal Services Advisory Council (ILSAC) looked at these issues in its 2004 report. ILSAC is a part-time advisory body established in 1990. The Secretariat is located within the Attorney-General’s Department in Canberra. The objectives are to improve the ‘international performance’ of Australia’s legal and related services – particularly international trade, education and commercial disputes in the legal system.<sup>24</sup> The ILSAC report noted that law schools were taking many approaches to this issue. These included ‘internationalising’ core subjects by integrating international and comparative materials, introducing new combined degree programs, instituting international exchange agreements and internships, arranging study tours to relevant international jurisdictions such as China, establishing Asian Law specialist centres, encouraging visits and lectures by international academics, cultivating an international network of alumni, marketing the law school’s program overseas, and offering postgraduate programs that specialise in international and comparative law.<sup>25</sup>

The 2004 Report made a number of recommendations in regard to the internationalisation of legal curriculum including:

- 6.1 That a representative committee be established to develop national policy and implement strategies to promote internationalisation of Australian legal education.
- 6.2 That incentives be developed through Commonwealth university funding to stimulate efforts to introduce global legal perspectives to substantive and skills-based legal education.

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<sup>23</sup> This has been happening throughout the university sector. See, eg, Maria Macindoe, *Socially and Culturally Responsive Curriculum—Getting Systematic; Broadening the Perspective: an investigation into inclusive and internationalised curriculum at QUT* (1999).

<sup>24</sup> ILSAC, above n 21.

<sup>25</sup> Legal Education Committee, ILSAC, *Internationalisation of the Australian Law Degree Report* (2004) 11, 12.

- 6.3 That a model syllabus be developed to promote the internationalisation of core legal subjects.
- 6.4 That practical skills necessary for the delivery of legal services in a global context be integrated into core subject areas of Australian legal education.
- 6.5 That an inter-disciplinary approach to legal education be promoted to enable law students to engage effectively with international organisations, particularly international trade and economic institutions.
- 6.6 That a national conference be held on the impact of globalisation on legal services to raise awareness among legal academics, law faculty management and practitioners about the need for a genuinely international approach to legal education.
- 6.7 That internationalisation of the law degree be achieved without adding significantly to the substantive content of the curriculum. In particular, efforts need to be made both to revise the Priestley 11 and to ensure that an international perspective is integrated into core areas of curriculum.’<sup>26</sup>

The Report encouraged the need for further implementation of international perspectives within the existing framework where possible. It particularly supported comparative law being used for this purpose:

‘Students will have an impoverished understanding ... without being aware of alternatives to the current law in the jurisdiction. Exploring alternatives allows students to see that human societies face common problems and that there are often multiple ways in which the law can address those problems. This counteracts the tendency among law students to assume that rules currently adopted in their jurisdiction are necessarily the only, or at least the best, way to address an issue.’<sup>27</sup>

The Report warned that ‘producing graduates that are ‘well-rounded’, more global in outlook, with the ability to employ legal skills in a transnational context, suggests the need for more inter-disciplinary study, including international politics and the

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<sup>26</sup> Ibid 13.

<sup>27</sup> Franklin A Gevurtz et al, ‘Report regarding the Pacific McGeorge workshop on globalising the law school curriculum’ (2005) 19(1) *Global Business and Development Law Journal* 1.

humanities’.<sup>28</sup> The ILSAC Report specifically mentioned the importance of skills in the Law degree as one means of promoting internationalisation within the curriculum.

All of these factors - the Federal Government’s intervention in publicly funded research, technology, increasing trade in professional legal services, and internationalisation - are leading to fundamental changes in the legal profession. Legal educators need to continue to produce lawyers who know and can work with the law in their own jurisdiction. But there is an increasing market for Australian law graduates who are skilled in working within the current transnational environment. Enhanced research skills covering international and comparative jurisdictions are essential in this environment.

### ***C The Law Curriculum and Research Skills***

Legal research skills have consistently been regarded as basic requisites for both academic and practising lawyers, and have invariably been included in any listing of desired lawyer attributes.<sup>29</sup> Certainly the Pearce Report in 1987 in Australia recognised the need for research training in a law degree.<sup>30</sup> Legal research was one of ten fundamental lawyering skills identified in the 1992 MacCrate Report in the United

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<sup>28</sup> ILSAC, above n 25, 10.

<sup>29</sup> For a ‘potted’ history pre-1993 see generally Terry Hutchinson, *Legal Research in Law Firms* (1994), ch 3; MSJ Keys Young, *Legal Research and Information Needs of Legal Practitioners: Discussion Paper* (1992); Avrom Sherr, *Solicitors and their Skills: A Study of the Viability of Different Research Methods for Collating and Categorising the Skills Solicitors Utilise in their Professional Work* (1991); Kim Economides and Jeff Smallcombe, *Preparatory Skills Training for Trainee Solicitors* (1991); Christopher Roper, *Senior Solicitors and their reasons for Participation in Continuing Legal Education* (Master of Arts (Honours) Thesis, Macquarie University, 1990); Deedra Benthall-Nietzel, ‘An Empirical Investigation of the Relationship between Lawyering Skills and Legal Education’ (1975) 63 *Kentucky Law Journal* 373; Robert A D Schwartz, ‘The Relative Importance of Skills used by Attorneys’ (1973) 3 *Golden Gate Law Review* 321; Gerard Nash, ‘How Best to Refresh Our Legal Knowledge’ in *Commonwealth Law Conference Proceedings and Papers* (1983); John de Groot, *Producing a Competent Lawyer* (DPhil Thesis, The University of Queensland, 1993) 199, 201; John Smillie, ‘Results of a Survey of Otago Law Graduates 1971-1981’ (1983) 5(3) *Otago Law Review* 442, 450; Frances Zemans and Victor Rosenblum, ‘Preparation for the Practice of Law – the Views of the Practicing Bar’ (1980) 1 *American Bar Foundation Research Journal* 1, 3; Leonard L Baird, ‘A Survey of the Relevance of Legal Training to Law School Graduates’ (1978) 29 *Journal of Legal Education* 264, 273; The Committee on the Future of the Legal Profession (The Marre Committee), *A Time for change: Report of the Committee* (1988) 113; John Peden, ‘Professional Legal Education and Skills Training for Australian Lawyers’ (1972) 46 *Australian Law Journal* 157, 167.

<sup>30</sup> Dennis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission, A Summary* (1987) 116-7, 132-5, 821-3.

States.<sup>31</sup> In 2003, Natalie Cuffe attempted to develop a framework for undergraduate legal research units using information literacy as a conceptual framework.<sup>32</sup> Cuffe suggested two components of legal research these being information technology literacy and legal research sources. The model Cuffe derived had three undergraduate legal research levels of achievement.<sup>33</sup> The following section of the paper examines the nexus between legal research skills and the transnational agenda. It reflects on research skills training developments, and then describes focus points in the undergraduate and postgraduate levels where research training should be augmented. The framework for these proposed changes consists of two separate research streams. The first stream is directed to the development of research skills for legal practice. The second stream is directed to the development of research skills for academic scholarship and writing.

### ***1 Why Use Legal Research Skills Training to Promote Transnational Awareness?***

Modern legal research includes information technology literacy. This includes the ability to use computers to access email and communication software, for wordprocessing and writing, to navigate on the Internet and to use electronic research sources efficiently. Because so much of legal research is available electronically, the research courses are excellent venues to enhance and hone these skills. These skills are crucial for the transnational lawyer. The transnational lawyer cannot be computer phobic!

Research skills also have a knowledge component – knowledge of the sources for research data, and the context for these sources. That context is the specific issue where the connection between research and transnational practice becomes most important. Legal researchers will achieve more understanding and a quicker synthesis of materials located if they are aware of the background to the data. This means for

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<sup>31</sup> American Bar Association, *Legal Education and Professional Development: An Educational Continuum, Report of the Taskforce on Law Schools and the Profession: Narrowing the Gap*, McCrate Report (1992).

<sup>32</sup> Natalie Cuffe, *Legal Information Literacy – student experiences and the implications for legal education curriculum development* (Master of Information Technology (Research) Thesis, Queensland University of Technology, 2003).

<sup>33</sup> *Ibid*, app 4.

example that it will be essential for a researcher to be aware that the US Supreme Court has a limited jurisdiction and in this and many other ways is unlike the Australian High Court. For an Australian researcher, the intricacies and differences between the Australian federal and state jurisdictions and those in the US or Canada can be confounding. These differences extend to the nature of the reference sources. Take for example the US use of codification for legislation which results in segments of legislation being published by topic. Another example is the annotated nature of much of the US legal material. This can be confusing for an untutored researcher who may think that the notes appended to the legislation in any of the US annotated codes, or the extensive commentary appended to the judgments in the *American Law Reports* are actually part of the primary legal material.

Few researchers access material solely from Australia. Sources on the main databases and certainly on the Internet include material from all the major English speaking and common law jurisdictions. These include the US, Canada, New Zealand, and the United Kingdom. Material from the European Union is frequently referred to now that the UK has joined that group. International treaties are also often referred to and needing to be accessed. For this reason it is imperative that the transnational lawyer be given grounding in these jurisdictions which would extend to the court structure, main sources of legislation and case law and reference sources. Sometimes the governance and structure of a body such as the EU needs elaboration in order to understand the materials that it publishes.

References to international law and treaties are frequently encountered in journal articles and readings. It is important that a transnational lawyer can locate a treaty. It is also important that they know the ratification process and how to check for this. This background information is easily inserted into a research course as leverage for research questions.

No doubt, the research courses cannot be too expansive. However, information is best understood and remembered when it is encountered at a point of need. This type of background international and comparative law information can be usefully integrated

in the research courses. This integration can take place incrementally so that students can build on previous knowledge during the degree.

## ***2 The Development of a Legal Practitioner Driven Model of Research Skills Training in the Undergraduate Law Degree***

There are two main models for research training. The first is a legal practitioner-driven model of research training. The second model is an academic scholarship driven research model. Too frequently the practitioner-driven model of research training has predominated at undergraduate level in Australia.

Law school graduates are now entering a variety of professions depending on their double degree choice. Research has shown that ‘Approximately 50 per cent of students start the law degree without intending to practise law.’<sup>34</sup> In addition, the AUTC report states that ‘[o]f those who completed their law studies in Australia in 1995, 55 [per cent] were working in the private legal profession three years later’.<sup>35</sup> Nevertheless, ‘the generalist nature of legal skills is demonstrated by the fact that ’82 [per cent] of 1997 graduates [were] engaged in legal work of some kind’.<sup>36</sup>

Historically, a number of reports reinforced the need for universities to reconsider the attributes of the graduates they produce.<sup>37</sup> The 1987 Pearce Report<sup>38</sup> and the subsequent McInnis and Margison Report<sup>39</sup> noted that the movement towards skills development within law schools had been slow. The same concern was voiced by the Australian Law Reform Commission in its report on managing justice, calling for

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<sup>34</sup> ILSAC, above n 25, 9.

<sup>35</sup> Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law: A Report commissioned by the Australian Universities Teaching Committee (AUTC)* (2003).

<sup>36</sup> ILSAC, above n 25; See also Ibid.

<sup>37</sup> Australian Technology Network (ATN), *Generic Capabilities of University Graduates* (2000); National Centre for Vocational Education Research (NCVER); Australian National Training Authority, *Generic Skills for the New Economy: Review of Research*, SA, 2001; See also QUT Manual of Policies and Procedures (2002) <<http://www.qut.edu.au/admin/mopp/>> at 23 February 2007; Sharon Christensen and Natalie Cuffe, *Graduate Capabilities in Law: QUT Teaching and Learning Development Large Grant Project Report QUT*, Faculty of Law January 2003 at 11; See Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (1999) <<http://www.austlii.edu.au/au/other/alrc/publications/reports/89/>> at 23 February 2007.

<sup>38</sup> Pearce et al, above n 30.

<sup>39</sup> Craig McInnis and Simon Margison, *Australian Law School after the 1987 Pearce Report* (1994).



legal education to focus on *what lawyers need to be able to do* rather than remaining anchored around restrictive and outdated notions of *what lawyers need to know*.<sup>40</sup> Many Australian law schools have taken notice of these concerns and have developed frameworks for identifying and integrating opportunities for law students to develop both the attributes they will require as lawyers and the technical knowledge traditionally provided.<sup>41</sup> But by 2003 the ‘stock take’ of legal education in Australia commissioned by the Australian Universities Teaching Committee (AUTC) found that the largest change in law school curricula over the past decade had been the ‘infusion of skills education and training into LLB programs’.<sup>42</sup>

Legal research forms part of information literacy - a major band graduate attribute which was identified in the QUT Law Faculty Project.<sup>43</sup> Information literacy has been defined as ‘the ability to locate, evaluate, manage and use information from a range of sources for problem solving, decision making and research’.<sup>44</sup> It includes computer skills, information technology literacy, knowledge of database structures, library and research skills, problem solving, critical analysis skills, oral communication and written communication.<sup>45</sup>

Undergraduate students need to be introduced to research training gradually and according to their needs. Within the undergraduate level, there is the requirement for an initial first year introduction, followed by a gradual enhancement of skills used to complete assignments and to complement other units such as advocacy and mooting. This incremental approach to skills development throughout the degree stands in comparison to the ‘one shot’ or inoculation model of teaching ‘characterised by having one skills unit at the beginning of the course and a “booster” unit towards the

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<sup>40</sup> Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (1999) [2.21].

<sup>41</sup> Robyn Carroll and Helen Wallace, ‘An Integrated Approach to Information Literacy in Legal Education’ (2002) 13(2) *Legal Education Review* 133.

<sup>42</sup> Johnstone and Vignaendra, above n 35.

<sup>43</sup> Sharon Christensen and Sally Kift, ‘Graduate Attributes and Legal Skills: Integration or Disintegration?’ (2000) 11(2) *Legal Education Review* 207, 216.

<sup>44</sup> Christine Bruce and Phil Candy, ‘Developing Information Literate Graduates: Prompts for Good Practice’ in Di Booker (ed) *The Learning Link: Information Literacy in Practice* (1995) 247.

<sup>45</sup> Christensen and Kift, above n 43, 221-2.

end’.<sup>46</sup> The addition of new layers can be compared to the structure of an onion or even a Russian Doll effect, with new knowledge being built on to the underlying base over the course of the degree.

Updating skills are a necessary component of any training so that students may become lifelong learners and be able to function effectively in ever changing work environments where new law and new endeavours prevail. Updating must also form a component of the training.<sup>47</sup>

The final year research unit needs to ensure appropriate levels of knowledge that were taught during the earlier research programs have been achieved. First year units would have included an introduction to the legal system and research strategies for all states and territories of Australia and the federal jurisdiction. If Public International Law and the access and use of treaties have been introduced earlier then this knowledge and skills in use should be reinforced. Before graduating, it is important that students have been given some knowledge of the New Zealand legal system and training in the research sources of that close neighbour. Ideally this should also be the case for the United States, the United Kingdom, Canada and the European Union.

In terms of writing, students by their final compulsory unit should know how to research and write a case note and a basic assignment. In final year, it is useful to make sure students have the writing skills necessary for practical lawyering. This includes the ability to write a clear letter to a client or a research memorandum to a senior partner in a law firm. They should be aware of the difference in style and content between these two. In addition, that unit is an opportunity to introduce students to the importance of being able to write a clear descriptive article for a firm newsletter for clients. These are all very practical skills.

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<sup>46</sup> Christensen and Kift, above n 43, 220. Barbara de la Harpe, Alex Radloff and John Wyber, ‘Quality and Generic (Professional) Skills’ (2000) 6(3) *Quality in Higher Education* 231.

<sup>47</sup> Phillip Candy, Gay Crebert and Jane O’Leary, *Developing Lifelong Learners through Undergraduate Education*, Report No 28 (1994)  
<[http://www.dest.gov.au/sectors/training\\_skills/publications\\_resources/profiles/nbeet/hec/developing\\_lifelong\\_learners\\_through\\_undergraduate.htm](http://www.dest.gov.au/sectors/training_skills/publications_resources/profiles/nbeet/hec/developing_lifelong_learners_through_undergraduate.htm)> at 23 February 2007.

The final year unit is an opportunity to re-enforce and update the knowledge of databases from earlier years. The rate of information technology change is such that the main research databases and sources have frequently changed their whole look and feel in three years. Students graduating from this unit should have a good knowledge of the doctrinal research methodology and the main sources of law for Australia. They should be able to use the catalogue and all the basic Australian legal sources.

Legal research is not a minor skill. It is basic – especially in the transnational context. It requires separate compulsory units – as well as opportunities for practice in other units throughout the degree. There is a need for practice, elaboration and re-enforcement throughout the degree so that the skills can be updated and used between the main units.

### ***3 Further Development of a Legal Practitioner-Driven Model of Research Skills Training in the Legal Practice Units***

The next level in the practice-driven or professionally based skills training occurs in the legal practice units. Traditionally these units have had very scant research training. The assumption is that the skills' training has occurred during the undergraduate degree. However, electronic research is an area of great flux. The legal practice cohort requires an update of research skills, specifically looking at any electronic developments.

Natalie Cuffe, in her study, concluded that law students had difficulty transferring their knowledge of research skills to actual research problems.<sup>48</sup> The lacuna Cuffe identified was akin to a person attempting to play a piano. They may know what the music is supposed to sound like, they may be able to read the notes, and they may know theoretically how the music should sound. But that does not necessarily translate to their being able to play the piece successfully – or in our analogy – use the research skills they have been taught during the undergraduate degree to locate, read

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<sup>48</sup> Cuffe, above n 32.

and analyse the information. Practise in this aspect of the research skill would seem to be the best focal point for the legal practice based research training.

In addition, it is timely to extend the jurisdictions on which the students are briefed during this stage. Increasingly Australia is being drawn closer to many of the smaller Pacific nation states, and is taking a position of relative economic importance in the Pacific region. Australia has forces stationed in both the Solomon Islands and Timor. Many Australians travel to Vanuatu and Fiji for recreation and work. As a result of its former status as a colony, Papua New Guinea has had a long association with Australia. These states will form the basis for major transactions in the coming decade, as will the ASEAN countries generally and the developing and trading centres in Asia. Lawyers being admitted to practise in Australia should have some understanding of the legal systems of our closest neighbours.

Extensions can also be made to the research communication skills during the Legal Practice courses. Most legal writing genres will be covered during the undergraduate years – including assignments, letters, research memos and law firm client newsletter articles. Perhaps students might at this stage also look at the requirements for a useful Barrister's Opinion as a precursor to their work experience. Part of this might be courses on the context of communication. Good communication tools are fundamental to relaying information to facilitate transnational practice where so much work is done by proxy – by letter, email, and phone.

#### ***4 The Development of an Academic Scholarship Model of Research Skills Training at the Undergraduate and Postgraduate Levels***

So far this discussion has centred on research training for professional practice. Alongside that training focus is another equally important one in the current transnational context. There is scope for enhanced training in academic scholarship using both undergraduate and postgraduate units. The cohort that fits within this band includes those students enrolled in individually chosen supervised research project units at the upper undergraduate level, as well as those undertaking Masters by coursework, Masters by Research, Professional Doctorates, and PhDs. Academics

frequently draw research assistants from this cohort of students who constitute a research elite who aspire to enter academic teaching and research roles.

The supervised research project which is offered as an elective to high achieving undergraduate students should be used as an additional step to begin training those students in individual research skills as a pre-cursor to postgraduate work and a career in academe. All students would have been given guidance and practise in writing a research assignment on a set topic early in their degree. The focus for this advanced group is in the formulation of their own individual research project. This whole step of formulating an objective, specific goals and main argument is an important skill. Students undertaking this project need direction in relation to writing a basic research proposal and formulating a hypothesis. In particular the issue of developing the topic to accord with its purpose and timeframes is a vital skill. All of this can be accomplished with individual input from an academic supervisor.

So far this discussion has concentrated on undergraduate training. Postgraduate students need a different focus and level of help. In addition to the graduate capabilities expected of all graduates, other capabilities are regarded as desirable, for example:

- advanced theoretical knowledge and analytical skills, as well as methodological, research design and problem-solving skills in a particular research area
- advanced information processing skills and knowledge of advanced information technologies and other research technologies
- independence in research planning and execution, consistent with the level of the research degree
- competence in the execution of protocols for research health and safety, ethical conduct and intellectual property
- skills in project management, teamwork, academic writing and oral communication

- awareness of the mechanisms for research results transfer to end-users, scholarly dissemination through publications and presentations, research policy, and research career planning,<sup>49</sup> and
- ability to use the supervisor/student relationship effectively.

In the current government climate in Australia, postgraduate researchers need to have a facility to gain funding in order to pursue research. This involves writing research grants, working as part of a team, designing research methodologies and a sympathetic view of multidisciplinary perspectives on research. These differences in levels and objects are becoming more important in the tertiary research training context.<sup>50</sup>

Postgraduate research training units tend to have very broad objectives which echo the graduate capabilities expectations already stated. These include the ability to:

- formulate a thesis and prepare a research proposal (including methodology and management timeline),
- select, develop and implement research methodologies to gather evidence that supports or refutes the thesis,
- demonstrate knowledge of paper-based and electronic research sources including governmental, international, and comparative sources, and
- possess interdisciplinary knowledge related to legal research including theoretical, social science, policy and reform research,
- communicate and defend research and project management timelines by oral presentation and written proposal, and
- analyse, evaluate and critically reflect on their individual research endeavours.<sup>51</sup>

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<sup>49</sup> *QUT Manual of Policies and Procedures* 1.4.3 Postgraduate capabilities and 1.4.4 Implementation and Monitoring <[http://www.mopp.qut.edu.au/C/C\\_01\\_04.html](http://www.mopp.qut.edu.au/C/C_01_04.html)> at 28 February 2007.

<sup>50</sup> Terry Hutchinson and Natalie Cuffe, 'Legal Research Project Management: Skills Extension for Upper Level Law Students' (2004) 38(2) *The Law Teacher* 159.

<sup>51</sup> See generally Terry Hutchinson, 'Taking up the Discourse: theory or practice' (1995) 11 *Queensland University of Technology Law and Justice Journal* 33.

The difficulty with training at the postgraduate level lies in the disparity of experience and training of those students enrolled in the course. Some postgraduate students will have experienced all the previous undergraduate levels of research training. However, in law, it is more usual for students to have a range of backgrounds including:

- International students trained overseas, often in civil law jurisdictions with varying degrees of English language expertise,
- Postgraduate practitioners who may have been trained in the Solicitors Board Examination environment and who have little or no university experience,
- Graduates who do not have an undergraduate law qualification, but are qualified in other areas such as engineering, town planning or business,
- Practitioners who have been in private practice for up to 30 years but who have no computer skills,
- Academics who are endeavouring to polish their research and academic writing skills, and
- PhD and Professional Doctorate students (SJD).

Students need to be brought to a minimum level of postgraduate research skills and knowledge. In addition, they need to be given some exposure to the range of research methodologies possible for their projects. This requires an introduction to quantitative and qualitative methodologies to augment the doctrinal work with which they may be familiar. This interdisciplinary aspect forms part of transnational preparation. The transnational lawyer must possess an awareness of other related disciplines. Unfortunately it is often the case that the prior research training has occurred within the ‘osmosis’ paradigm whereby research skills are assumed to be transmitted without formal training being provided. This new training scheme will require more of students. They will need to reflect on their research practice. This reflective process needs to be encouraged in order for the students to recognise their strengths and

weaknesses as researchers and so they may progress further. Some of these students will be embarking on extensive empirical methodologies. Others will use a doctrinal methodology or simple survey. In any case, the students need exposure to the imperatives of research ethics and the simple processes of requesting ethics approval from the relevant university committees.

As with the upper level undergraduate research project, students undertaking this project should be provided with an opportunity to present their proposal to their peers and the unit coordinator. They should be encouraged to use PowerPoint and a one page outline for the audience as an adjunct to their presentation, and to answer questions and accept suggestions about their project – to basically defend their intellectual endeavours as required in formal PhD academic processes.

Using these extensions to Cuffe's incremental undergraduate research skills program, legal research training can be developed over the undergraduate and postgraduate programs. Both streams of research endeavour – practical and academic – can be engendered. Students completing these graduated research training steps will be well prepared to enter the transnational legal context, whether as practising lawyers, academic researchers or in a broader law related professional context.

### ***D New Century, Augmented Legal Research Curriculum***

Augmented research training is vital for today's lawyers so that they can more fully realise an improved knowledge and skills base that befits the new transnational legal context. The contextual issues driving change in the Australian legal education sector, including Australian government interest in fostering research quality, the effects of extensive take-up of information technology in the higher education sector, the growth of trade in professional legal services, and policies aimed at internationalising the legal curriculum all point to a need for transnational flexibility for law graduates.

These factors support the need for expanded legal research and communication training at the undergraduate level, together with enhanced offerings at the



postgraduate level. First year legal research units have traditionally focussed on inculcating basic research skills. These have ensured that students could ‘find the law’ in their own state jurisdictions, and also in the Commonwealth jurisdiction. There is significant scope for further development and augmentation of the skills base of the transnational lawyer. This paper has argued that integrated legal research training is pivotal to educating the modern transnational lawyer. The paper has identified two separate frameworks for research training and the levels that can be used to support skills training for each of these frameworks. Wherever the ultimate destination of graduates, an incremental development of transnational research skills such as those outlined will ensure effective outcomes.